

# **STATE OF MAINE/STATE PLANNING OFFICE**

## **Determination of Public Benefit for Juniper Ridge Landfill Expansion**

**Department Order #S-020700-W5-AU-N**

**APPEAL – Edward S. Spencer**

- **Draft Proposed Board Order**



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Susan M. Lessard, Chair

Cynthia S. Bertocci  
Executive Analyst

Terry Dawson

PAUL R. LEPAGE  
GOVERNOR

IN THE MATTER OF

STATE OF MAINE, ACTING THROUGH THE	)	APPEAL OF SOLID
STATE PLANNING OFFICE	)	WASTE LICENSE
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	
JUNIPER RIDGE LANDFILL EXPANSION	)	FINDINGS OF FACT
PUBLIC BENEFIT DETERMINATION	)	AND ORDER
#S-020700-W5-BB-N	)	(DENIAL)

Pursuant to the provisions of the *Department of Environmental Protection Statute*, 38 M.R.S.A. §§341 to 358, the *Maine Hazardous Waste, Septage and Solid Waste Management Act*, 38 M.R.S.A. §§1301 to 1310-AA, and 06-096 CMR 400 *Solid Waste Management Rules: General Provisions* (last amended July 20, 2010), the Board of Environmental Protection ("Board") has considered the appeal filed by Edward S. Spencer of the Commissioner's partial approval of an application for determination of public benefit filed by the State Planning Office ("SPO") for expansion of the Juniper Ridge Landfill ("JRL"). Based upon materials in Department's file, the Board finds the following facts:

1. LISTING OF ACRONYMS, TERMS AND ABBREVIATIONS USED IN THIS DOCUMENT

appellant	Edward S. Spencer, residing at 1140 Kirkland Road in Old Town, Maine
applicant and permittee	jointly, SPO and NEWSME (as contracted operator of JRL)
Board	Maine Board of Environmental Protection
Casella	Casella Waste Systems, Inc.
CDD	construction and demolition debris
DEP or Department	Maine Department of Environmental Protection
GOC	Maine State Legislature Government Oversight Committee
JRL	Juniper Ridge Landfill, located in Old Town, Maine
KTI	KTI CDD processing facility, owned by Casella and located in Lewiston, Maine
LD	legislative document
MSW	municipal solid waste
NEWSME	NEWSME Landfill Operations, LLC, a subsidiary of Casella and the operator of JRL
OBW	oversized-bulky waste
OPEGA	Maine Office of Program Evaluation and Government Accountability
OSA	the Operating Services Agreement between SPO and Casella, dated February 4, 2004 (and its 2 amendments)
PBD	public benefit determination
PBD decision	DEP license #S-020700-W5-AU-N, issued January 31, 2012
PERC	Penobscot Energy Recovery Company incinerator, located in Orrington, Maine
SPO	Maine State Planning Office, acting for the State of Maine

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## 2. BACKGROUND

In June 2003, during the 1<sup>st</sup> regular session of the 121<sup>st</sup> Legislature, the Maine Legislature passed Resolve 2003, Chapter 93 authorizing the State of Maine, acting through the SPO, to purchase the existing and operating West Old Town Landfill, now known as JRL, from Fort James Operating Company for use as a state-owned landfill. The same resolve authorized SPO to contract for the operation of the landfill; after a competitive bid process SPO selected Casella Waste Systems, Inc. ("Casella") as the operator. On October 30, 2003, SPO submitted to the Department of Environmental Protection ("Department" or "DEP") an amendment application to broaden the solid wastes (including special wastes) approved for disposal at JRL and increase the licensed vertical height of JRL (with no horizontal increase in the landfill footprint). On February 4, 2004, SPO and Casella finalized an Operating Services Agreement ("OSA"); this agreement details the contractual terms for licensing, construction and operation of JRL. The Department approved the amendment application (Department Order #S-020700-WD-N-A) on April 9, 2004.

In 2009, during the 1<sup>st</sup> regular session of the 124<sup>th</sup> Legislature, the public benefit determination ("PBD") statute (38 M.R.S.A. §1310-AA) was amended to extend applicability to new state-owned solid waste disposal facilities or expansions to existing state-owned solid waste disposal facilities.

On November 19, 2009, the applicant filed an application for a determination of public benefit for an expansion of JRL. On January 5, 2010, the Department issued a draft denial of the PBD application. On January 13, 2010, the applicant withdrew the PBD application.

On September 15, 2011, the applicant filed a second application for a PBD for an expansion of JRL, requesting an expansion of 21.9 million cubic yards of capacity. The Department held a public meeting on October 24, 2011 and also accepted written comments on the application. On January 31, 2012 the Commissioner issued partial approval of the PBD application, finding that the proposed expansion will provide a substantial public benefit, provided the expansion is limited to 9.35 million cubic yards, and further provided an annual limit on OBW disposal in the 9.35 million cubic yard expansion is established, and provided no more than 25,000 tons of MSW bypass from Maine Energy is delivered to the 9.35 million cubic yard expansion in any calendar year, unless authorized by specific conditions in a Department license for the expansion.

## 3. PROCEDURAL HISTORY

A. On February 29, 2012, Mr. Spencer filed a timely appeal of the Commissioner's PBD decision (DEP #S-020700-W5-AU-N) for the proposed JRL expansion to the Board.

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Mr. Spencer's appeal refers to, but does not include, the following documents not already considered part of the Department's record of the application: a Request for Proposals issued by SPO for an owner, operator or leaser of the Dolby Landfill facility in the Millinocket, Maine area; legislation pending at the time the appeal was filed: LD 879, LD 1278 and LD 1458; and a request that the Maine Office of Program Evaluation and Government Accountability ("OPEGA") undertake a review and audit of JRL's history to date.

- B. On March 15, 2012, Pierce Atwood, LLP, representing the permittee, filed with the Board a Motion to Dismiss the appeal. In part, the Motion argued that Mr. Spencer failed to establish that he would be aggrieved because he did not demonstrate that he has suffered a particularized injury from issuance of the PBD. The Motion also requested that the Board stay or suspend the time for the permittee to respond to the merits of the appeal until the issue of standing is resolved by the Board.
- C. In a letter dated March 20, 2012, the Board Chair offered Mr. Spencer the opportunity to respond to the permittee's Motion to Dismiss for lack of standing as an aggrieved person.
- D. Also on March 20, 2012, the Board Chair notified the permittee that the Board would stay the timeline for the permittee's response to the merits of the appeal until 30 days from the date of final agency action on the Motion to Dismiss.
- E. On March 26, 2012, Mr. Spencer filed a response to the permittee's Motion to Dismiss his appeal.
- F. On April 2, 2012, after review of the above submissions, the Board Chair found that Mr. Spencer had made an adequate showing of standing based upon a sufficient connection between the particularized injury he claims to have suffered and the approval of the PBD decision.
- G. On April 11, 2012, Pierce Atwood, LLP, representing the permittee, appealed the Board Chair's decision on standing to the full Board.
- H. At a regular meeting of the Board held on May 3, 2012, the Board considered the arguments made by Mr. Spencer and Pierce Atwood, LLP, and the Board Chair's summation of her review of the arguments that resulted in her April 2, 2012 finding that Mr. Spencer had made an adequate showing of standing. After discussion, the Board voted to uphold the Chair's decision and allow Mr. Spencer's appeal of the PBD to be heard at a future meeting.

- I. On May 7, 2012, a signed copy of the Board's May 3, 2012 decision on Mr. Spencer's status as an aggrieved person for the purpose of bringing an appeal of the PBD decision was mailed to the interested parties for this appeal.
- J. On June 1, 2012, Pierce Atwood, LLP, representing the permittee, submitted its response to the issues raised by Mr. Spencer in his appeal.

4. REMEDIES REQUESTED

The appellant specifically requests the following from the Board:

- A. That the Commissioner's PBD decision be reversed. Mr. Spencer states that in view of the many possibilities for reducing the need for solid waste disposal capacity it is premature to say expansion of the JRL is needed.
- B. That the Department be required to move forward promptly on the following suggestions from the appellant, as described more fully in Finding of Fact #5.B, below:
  - Amend the 2<sup>nd</sup> amendment to the OSA;
  - Replace the existing municipal solid waste ("MSW") bypass link between Maine Energy and JRL with a new limit on the amount of MSW bypass from Maine Energy JRL can accept in the currently operating JRL;
  - Impose a limit on the amount of oversized-bulky waste ("OBW") JRL can accept in the currently operating JRL;
  - Require full implementation of 38 M.R.S.A. §1310-N(5-A); and
  - Require that a construction and demolition debris ("CDD") processing facility be located at the JRL site, with the resulting CDD fines used as alternative daily cover at JRL and the processed CDD supplied to the Penobscot Energy Recovery Company incinerator ("PERC"), located in Orrington, Maine, for fuel.
- C. That the Department be required to re-examine the state's landfill capacity needs now that the current legislative session is completed.
- D. That the Board ask the Department to delay a decision on capacity needs until the Dolby Landfill facility situation is known.
- E. That the Department be mandated to help OPEGA in its review and audit of JRL, and that it not approve the PBD for expansion of JRL until OPEGA has made its recommendations.

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## 5. BASIS FOR THE APPEAL OF THE DEPARTMENT LICENSE

While stating that he agrees with almost all Department findings in the PBD decision, the appellant contends that there is no need for expanded landfill capacity at this time. The appellant contends reversal of the PBD decision "will allow for a much clearer and more comprehensive appraisal of Maine's waste disposal capacity needs", and objects to the Commissioner's finding that there is sufficient long-term (10 years) disposal capacity for Maine wastes only if the existing solid waste disposal options remain available and waste generation rates remain depressed<sup>1</sup>. The following specific objections are listed:

- A. Mr. Spencer contends that we are "beyond Peak Trash production regionally and nationally", and thus waste generation is unlikely to increase above current levels.
- B. Mr. Spencer states that even if the economy shows steady growth in the immediate, short and long-terms, there are many solutions attainable that will result in lower waste volumes being deposited in Maine. Mr. Spencer notes that the PBD decision addresses many of these solutions, but he suggests they weren't fully considered or did not go far enough.
  - He notes that the Commissioner's recommendation that the 2<sup>nd</sup> amendment to the OSA between SPO and Casella be amended<sup>2</sup>, if followed, could greatly reduce the amount of CDD fines from KTI disposed at JRL.
  - He notes that if the Department were to de-link the existing connection between the Maine Energy incinerator, located in Biddeford, Maine, and JRL with regards to disposal of MSW bypass from Maine Energy<sup>3</sup> for the currently operating JRL, in addition to the proposed future expansion, less MSW would be disposed in JRL.
  - Likewise, he notes that if the Department were to impose a limit on the tonnage of OBW disposed<sup>4</sup> in the currently operating JRL, in addition to the proposed future expansion, less OBW would be disposed in JRL.
  - He notes that full implementation of 38 M.R.S.A. §1310-N(5-A) should reduce the quantity of waste to be disposed at JRL.
  - He suggests that establishing a CDD processing facility at JRL would reduce the volume of CDD disposed at JRL, provide CDD fines for use as alternative daily cover at JRL, and provide fuel for PERC and thus reduce the amount of imported out-of-state waste.

<sup>1</sup> see Finding of Fact #5.C of the PBD decision

<sup>2</sup> see Finding of Fact #5.B and C of the PBD decision

<sup>3</sup> see Findings of Fact #5.B and C of the PBD decision

<sup>4</sup> see Findings of Fact #5.B and C of the PBD decision

C. Mr. Spencer notes there were bills being considered by the Legislature, and actions by the SPO, that would greatly reduce the need for expanded capacity:

- The Request for Proposal issued by SPO for the purchase, operation or lease of the State-owned Dolby Landfill facility in East Millinocket could substantially expand disposal capacity in Maine and reduce the pressure for disposal capacity at JRL.
- LD 879 could result in expansion of Waste Management Inc.'s Crossroads Landfill in Norridgewock, Maine.
- Passage of LD 1278 would impose new disposal fees on CDD and CDD fines disposed at JRL, and could lead to a decrease in these wastes going to JRL.
- Passage of LD 1458 would give oversight of Maine's recycling programs to the Department, which could result in improved recycling rates and thus further reduce the need for expansion of JRL.
- The requested review and audit by OPEGA of JRL's history to date, if granted, could yield much objective information which would add to DEP's knowledge, and provide numbers and statements independent of those provided by the applicant.

## 6. RESPONSE TO THE APPEAL

A. Mr. Spencer contends that we are "beyond Peak Trash production regionally and nationally", and thus waste generation is unlikely to increase above current levels.

**Permittee's Objection:** In summary, the permittee argues that it would be imprudent to plan for solid waste capacity based on continuation of a prolonged economic downturn and reduced waste generation rates, and doing so could lead to a solid waste management crisis in Maine. The permittee states that the Commissioner's decision is supported by the data, since SPO's Capacity Report<sup>5</sup> projects JRL will reach its licensed capacity in 2017 or 2018, depending on whether zero waste growth is assumed, or 2.8% annual growth beginning in 2012. In the zero waste growth table, SPO estimated JRL would receive 700,000 tons of waste annually in future years. JRL received 708,198 tons of waste in 2010, and 706,452 tons of waste<sup>6</sup> in 2011. The permittee asserts, in detail within its response to the appeal, that other existing landfills cannot be counted on to accommodate all of the waste currently managed by JRL, even at the quantities JRL is receiving during the present economic downturn.

**Board Response:** The Board finds it would be unwise to assume that Maine's economy will not improve in the next several years, or that Maine's waste generation rates will decrease

<sup>5</sup>"Solid Waste Generation & Disposal Capacity Report for Calendar Year 2009", prepared by SPO and dated January 2011  
<sup>6</sup> based on aggregation of the monthly reports from JRL

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below existing levels. The Board further finds that the Department's review of waste generation rates was based on actual data submitted by the solid waste facilities in Maine, and that the Commissioner's decision to issue a partial approval of the capacity requested by the applicant demonstrates a judicious review of the long-term capacity needs of the State. The Board also finds that the permitting process for non-municipal landfills, which includes receipt of a determination of environmental feasibility, receipt of a determination of public benefit, and approval of the technical application, along with any appeals of these actions, plus receipt of necessary permits from state and federal agencies and the municipality, is a multi-year undertaking. The Board finds that it cannot ignore the uncertainties associated with the state, federal and local permitting, and reverse the Commissioner's thoughtful decision that approximately half the capacity requested by the applicant should be sufficient to ensure future disposal capacity (if approved through the technical application) for the portion of Maine's solid waste currently handled at JRL. Reversal of the PBD decision could result in a disposal crisis that would have implications for the businesses and municipalities in Maine that must have long-term plans for the disposal of the wastes they generate.

- B. Mr. Spencer states that even if the economy shows steady growth in the immediate, short and long-terms, there are many solutions attainable that will result in lower waste volumes being deposited in Maine. Mr. Spencer notes that the PBD decision addresses many of the solutions listed in Finding of Fact #5.B, above, but he suggests they weren't fully considered or did not go far enough. Mr. Spencer requests that the Board require the Department to move forward promptly on the actions listed in Finding of Fact #4.B, above.

**Permittee's Objection:** In summary, the permittee contends that the events Mr. Spencer claims would reduce the need for disposal capacity are purely speculative and would not yield the type of results Mr. Spencer suggests, even if the events materialized. The permittee argues that Mr. Spencer chose to ignore other events that could increase waste disposal needs, such as the possible closure of PERC. The permittee provides a detailed response to Mr. Spencer's claim that the amount of CDD residue needing placement in a landfill can be significantly decreased through the full implementation of 38 M.R.S.A. §1310-N(5-A), imposition of a cap on OBW disposed in the existing JRL, and amendment of the OSA to reduce the amount of CDD processing residue accepted at JRL. The permittee also provides a detailed response to Mr. Spencer's claim that de-linking the existing JRL license from Maine Energy's incinerator solid waste license would not necessarily decrease the amount of capacity consumed by MSW bypass at JRL<sup>7</sup>, and notes that Mr. Spencer did not discuss how the de-linking could legally be imposed by the Department at the existing JRL. The permittee also states Mr. Spencer has no rational basis for believing the hypothetical construction of a CDD processing facility at JRL would occur, or attempting to factor such a facility into the Department's evaluation of Maine's long term disposal capacity needs.

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<sup>7</sup> The current JRL license limits the total amount of MSW that can be handled at both Maine Energy and JRL to 310,000 tons per year.



**Board Response:** The Board finds that its responsibilities and duties are described in 38 M.R.S.A. § 341-D; the listing does not include the ability to require the Department to take any of the actions listed in numbers 2.A through E of his appeal, and listed in Finding of Fact #5.B, above.

- Action 2.A addresses a recommendation in the PBD decision that SPO and Casella renegotiate the 2<sup>nd</sup> amendment to the OSA<sup>8</sup> to address the quantity of CDD imported into Maine, and processed at KTI, under the terms of the OSA. The Board finds that the Commissioner correctly concluded she did not have the legal authority to require renegotiation of the OSA, and thus could only make a recommendation. Likewise, the Board has no legal authority to require renegotiation of terms of a contract between SPO and Casella.
- Action 2.B requests that the Department de-link the Maine Energy and existing JRL solid waste licenses, as described in Finding of Fact #5.C of the PBD for the JRL expansion, and replace it with a 25,000 ton annual limit on the amount of MSW bypass from Maine Energy that may be accepted at the existing JRL. The Board finds that Mr. Spencer has appealed a PBD for expansion of the JRL. As required by 38 M.R.S.A. §§ 1310-N(2-F) and 1310-AA, this expansion will be separately licensed from the existing JRL. The only authority the Board has to reach into the previously issued license and modify the conditions of that license is provided in 38 M.R.S.A. § 341-D (3), which specifies the Board may modify a license "at the request of the commissioner and after written notice and opportunity for a hearing pursuant to Title 5, chapter 376, subchapter 4...". The Commissioner has not requested any action on the existing JRL licenses.
- Action 2.C requests that the Department impose a limit on OBW on the existing JRL license, as described in Finding of Fact #5.C of the PBD for the JRL expansion. Again, the Board finds that the only authority it has to reach into the previously issued license and modify the conditions of that license is provided in 38 M.R.S.A. § 341-D (3), the Commissioner has not requested changes to the existing JRL license, and this appeal is of the PBD for expansion of the JRL.
- Action 2.D states that full implementation of 38 M.R.S.A. §1310-N(5-A) should reduce the amount of CDD residues coming to JRL for disposal. The Board finds that 38 M.R.S.A. §1310-N(5-A)(B) requires processing facilities that generate residue requiring disposal (not disposal facilities, such as landfills) to recycle or process into fuel for combustion all waste accepted at the processing facilities to the maximum extent practicable, but in no case less than 50%. 38 M.R.S.A. §1310-N(5-A)(A) requires applicants for new and expanded disposal facilities to demonstrate that they will accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by statute, and that they

<sup>8</sup> see Finding of Fact #5.C of the PBD decision

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have shown consistency with the recycling provisions of the state plan. The Board also finds that the Commissioner appropriately directed periodic third party audits of CDD processing facilities that transport more than 10,000 tons of OBW to the JRL expansion on an annual basis<sup>9</sup>, to ensure that the volume of this waste disposed at the JRL expansion is minimized, in conformance with the intent of 38 M.R.S.A. §1310-N(5-A)(A). Thus, the Board finds that these requirements will be addressed in the technical application for the expansion of JRL, and throughout operation of the JRL expansion if the application for the technical license is approved.

- Action 2.E suggests placement of a CDD processing facility at JRL, to reduce the volume of CDD disposed in JRL, provide CDD fines for use as alternative daily cover in JRL and provide fuel for PERC. The Board finds that neither the Department nor the Board have the legal authority to require a person to file an application for a new facility.

C. Mr. Spencer notes that several bills being considered by the Legislature, and anticipated actions by the SPO and OPEGA, (see listing in Finding of Fact #5.C, above) would greatly reduce the need for expanded capacity. Mr. Spencer requests that the Board require the Department to: re-examine landfill capacity needs now that the recent legislative session is completed, delay a decision on capacity needs until the Dolby Landfill facility situation is known, and help OPEGA in its review and audit of JRL and not approve the PBD for expansion of JRL until OPEGA has made its recommendation.

**Permittee's Objection:** The permittee contends that the unknowns identified by Mr. Spencer do not alter the Commissioner's finding that expansion of JRL meets the State's long-term capacity needs. The permittee argues that unknowns about the future and the outcome of pending actions will always exist during review of a PBD application, and that 38 M.R.S.A. § 1310-AA(2) requires that the Commissioner issue a decision on a PBD application within 60 days of its receipt. The permittee notes that 38 M.R.S.A. § 1310-AA(5) allows the Department to revise a PBD in the event of a material change in the underlying facts or circumstances upon which a PBD approval was based. The permittee provides a detailed rebuttal to each of Mr. Spencer's claims concerning landfill capacity that could be provided by the State-owned Dolby Landfill facility in East Millinocket, the possible expansion of Waste Management's Crossroads Landfill in Norridgewock, new fees on the disposal of CDD and CDD fines, the transfer of oversight of Maine recycling program from SPO to the Department, and the possible audit of JRL by OPEGA. In summary, the permittee states none of these actions is likely to negate the need for additional disposal capacity to be available before the existing JRL reaches its licensed capacity in 2017 or 2018.

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<sup>9</sup> See Finding of Fact #5.C of the PBD decision

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**Board Response:** The Board finds that the Department is required by provisions in 38 M.R.S.A. § 344.1-A to process an application under the substantive rules in effect on the date the application is determined to be complete for processing, and process an application in accordance with timetable established under 38 M.R.S.A. § 344-B. The PBD decision appealed by Mr. Spencer was accepted as complete for processing on September 23, 2011, and the timetable for processing a PBD application is 60 days. As allowed by statute, the applicant extended the timeline until January 31, 2012 at the Department's request. The PBD decision was issued on January 31, 2012. The Board further finds that LDs that may impact applications pending before the Department are considered in each legislative session; if passed, each LD states its applicability to existing licenses and new applications. With regards to this PBD decision appealed by Mr. Spencer, 38 M.R.S.A. § AA(5) addresses the circumstances under which the Department may revise an existing PBD. Although the LDs listed in Mr. Spencer's appeal that were passed in the 2<sup>nd</sup> regular session of the 125<sup>th</sup> Legislature were not effective at the time the PBD application was being processed, the Board's review of the new LDs indicates that none of them are likely to cause the development of sufficient disposal capacity within the next 10 years to justify a reversal of the Commissioner's decision on the PBD for expansion of JRL:

- LD 879 modifies 38 M.R.S.A. § 1310-X to allow the single remaining operating commercial landfill in Maine (the Crossroads Landfill, owned by Waste Management, Inc. and located in Norridgewock) to file applications for an expansion. If Waste Management, Inc. decides to file applications for the expansion of the Crossroads Landfill, it will be a lengthy process. The Board finds the Department appropriately did not include any capacity in its calculations of available capacity that is not already licensed, since the final outcome of a licensing process cannot be foreseen.
- While LD 1278 establishes new \$1 per ton fees on the disposal of CDD and CDD residues in 2013, and \$2 per ton fees on the same wastes beginning in January 2014, the Board finds it cannot assume these fees will result in a decrease in CDD disposal sufficient to erase the need for landfill capacity for their disposal.
- LD 1458 did not make it to the Legislature's floor, however, the provisions referred to in Mr. Spencer's appeal were included in the supplemental budget bill, LD 1903. The Board finds that while it agrees the Department can be a leader in improving recycling rates, nothing in the LD mandates an increase in recycling and thus the Board finds it cannot assume recycling rates will increase sufficiently to negate the need for landfill capacity within the next 10 years.

With regards to Mr. Spencer's request that the Board ask the Department to delay making a finding on this PBD until the "Dolby Landfill facility situation is known", the Board finds that the Commissioner's decision on the PBD was finalized when the decision was issued on January 31, 2012. Although in his appeal Mr. Spencer did not ask to supplement the record with any specific information on the "Dolby Landfill facility situation", the Board

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understands that, based on information in the Department's records, the currently licensed space available at the Dolby Landfill facility is very limited, and under the current license is available for disposal only of solid waste from the Great Northern Paper mills and a limited amount of oil contaminated soil.

With regards to Mr. Spencer's request that the Board mandate that the Department help OPEGA in its review and audit, and the PBD for expansion of JRL not be approved until the OPEGA recommendations are out, the Board finds it is not authorized by 38 M.R.S.A. § 341-D to make such a requirement of the Department; however, the Board notes that it has no reason to believe the Department would not assist OPEGA if its assistance is requested. The Board also finds that, although in his appeal Mr. Spencer did not ask to supplement the record with the request to OPEGA he references, based on meeting summaries available on the Maine State Legislature Government Oversight Committee's ("GOC") website the GOC has yet to decide to authorize a review of the operation and management of JRL.

In summary, the Board finds that decisions on pending applications must be made based on the statutes and rules in effect at that time, and other information available during the processing period for the application; it is unreasonable to request any applicant to wait until all possible unknowns are resolved before a decision is made on an application. The Board finds that the Commissioner appropriately issued the PBD for expansion of JRL based on the statutes and rules in effect on September 23, 2011, and the data and other information available during the time the application was processed by the Department, including information provided by the public during that time. The Board also finds that, as stated elsewhere in this order in greater detail, none of the unknowns identified in Mr. Spencer's appeal are likely to affect the available solid waste disposal capacity in a substantive way within the next 10 years.

BASED on the above Findings of Fact, the Board makes the following CONCLUSIONS:

1. The appellant has standing, is aggrieved and has made a timely appeal of the Department Order.
2. The appellant has submitted no new or additional information or arguments that would warrant vacating the Department's decision.

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3. All other conclusions remain as set forth in Department Order #S-020700-W5-AU-N.

THEREFORE, the Board DENIES the appeal by Edward S. Spencer to reverse the Commissioner's Determination of Public Benefit decision for the Juniper Ridge Landfill Expansion, Department Order #S-020700-W5-AU-N and AFFIRMS Department Order #S-020700-W5-AU-N;

DONE AND DATED AT AUGUSTA, MAINE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2012.

BY:

\_\_\_\_\_  
 Susan M. Lessard, Chair

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

Date of initial receipt of application: September 15, 2011

Date of application acceptance: September 23, 2011

Date filed with Board of Environmental Protection: January 31, 2012

Date of initial receipt of appeal: February 21, 2012

Date of decision the appellant has standing for this application: May 3, 2012

Date of appeal with Board of Environmental Protection: July 19, 2012

XCD74851

